COMPETITION LAW IN THE EUROPEAN COMMUNITIES

July, 1999

Volume 22, Issue 7

FAIRFORD PRESS

Publisher and Editor: Bryan Harris

Fairford Review : EU Reports : EU Services : Competition Law in the European Communities

6A Market Place, Cirencester GL7 4YF, UK

P O Box 323, Eliot ME 03903-0323, USA

Tel & Fax (44) (0) 1451 861 464

Tel & Fax (1) (207) 439 5932

July, 1999

Volume 22 Issue 7

COMPETITION LAW IN THE EUROPEAN COMMUNITIES

Copyright © 1999 Bryan Harris
ISSN 0141-769X

CONTENTS

151 COMMENT

Competition and the Internal Market

152 STATE AIDS (RESTRUCTURING)

Commission's Guidelines

154 ANCILLARY RESTRAINTS (STEEL PRODUCTS)

The ISPAT / Unimetal Case

155 PRICING POLICY (SUGAR)

The British Sugar Case

Competition and the Internal Market

It is one of the canons of competition policy that it has wider aims than the removal of restrictions or distortions of trade and that these wider aims include a substantial contribution to the creation of an internal market. The point was made in the Commission's White Paper on the Creation of the Internal Market; and the internal market is now defined as "an area without internal frontiers, in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties" (Article 14, formerly 7a, EC Treaty). In several competition cases, the Commission and Court have emphasised the infuence of this consideration on their decisions and judgments.

However, there is one area in which the objectives of the Treaties are mutually inconsistent. This is the area of agricultural products. In the present issue there is an extended report of the *British Sugar* case, in which the differences between the objectives in question are clearly illustrated. The Commission itself drew attention to the fact that the national quotas under the common agricultural policy tended to "partition the markets", a process wholly inimical to that of integration. The problem is that the CAP does not even pretend to serve the development of an internal market: Article 33 (formerly 39) of the EC Treaty, setting out the objectives of the CAP, does not even hint at any such development.

In this, the CAP differs from the series of Directives, under which the Commission hopes that the European Union's electricity industry will become a genuine single market. Unlike the provisions of the EC Treaty governing the CAP, these Directives are primarily aimed at the creation of an area without internal frontiers. Yet the attempts to comply with them are starting to fall foul of the rules on competition. At first sight, this is puzzling. Two cases in particular are a cause for concern. One arises from the schemes notified by six Member States under Directive EC/92/96, on "common rules for the internal market in electricity"; all the schemes appear to the Commission to involve unlawful state aids. The other case arises from the scheme by the French government to give effect to Directives EEC/388/90, EC/19/96 and EC/33/97, which the Commission believes will infringe the rules on competition under Articles 82 and 86 (formerly 86 and 90) of the Treaty. There is a nice irony in the idea of Member States being able to comply with one set of rules only by infringing another. □

[The sources for these electricity cases are Commission Statements IP/99/494, of 12 July 1999, and IP/99/467, of 8 July, 1999.]